

Current Criminal Justice Policies

2019 Annual Report

Utah Commission on Criminal & Juvenile Justice

(CCJJ)

November 2019

Executive Summary

House Bill 348, passed during the 2015 General Session, reformed procedures and practices in Utah's criminal justice system. Policies in the reform package was premised around several key objectives, including prioritizing use of prison for serious and violent offenders; improving outcomes for offenders by strengthening supervision and expanding treatment services; and ensuring oversight and accountability. This fourth annual report provides an update on how well the system is meeting the policy objectives of House Bill 348 while providing a discussion around current challenges. The take-aways are as follows:

- **The share of the prison population that is non-violent continues to be lower through our current criminal justice policies.** Policies that reduced prison length of stay and lowered certain low level drug penalties have reduced the percent of the prison population that is non-violent from 41 to 34 percent.
- **Utah's prison population exceeded its post-reform projections in fiscal year 2018 and continues in fiscal year 2019.** While the prison population remains below projections absent criminal justice reform, current numbers are above House Bill 348 projections causing concerns around future prison bed space.
- **More justice involved individuals are accessing substance use treatment through Utah's public behavioral system.** The number of justice involved individuals admitted to substance use treatment continued to increase throughout fiscal year 2019. Though this upward trend is encouraging, a significant number of individuals entering the criminal justice system remain in need of treatment services.
- **Oversight and accountability for criminal justice reform requires continued and expanded collaboration.** Providing and informing state leaders with the best information possible is *contingent* on increased partnership and data sharing across state and local entities.
- **CCJJ and its partner agencies are responding to the system's current challenges.** A newly developed House Bill 348 action plan and intensified criminal justice stakeholder collaboration is taking place to course-correct the system's current trajectory while guiding it to a better place.

Introduction

The 2015 reform package, House Bill 348 was a result of a data driven, collaborative endeavor from Utah's state and local leaders in the criminal justice system. Recognizing the prison population growth and associated fiscal and societal costs, a myriad of targeted policies informed by the literature was created. Policy objectives of House Bill 348 focused on prioritizing use of prison for serious and violent offenders; improving outcomes for offenders by strengthening supervision and expanding treatment services; and ensuring oversight and accountability. In the following sections we provide an update on current trends around these policy objectives while providing a discussion around important system challenges.

Policy Objective 1, Use of Prison

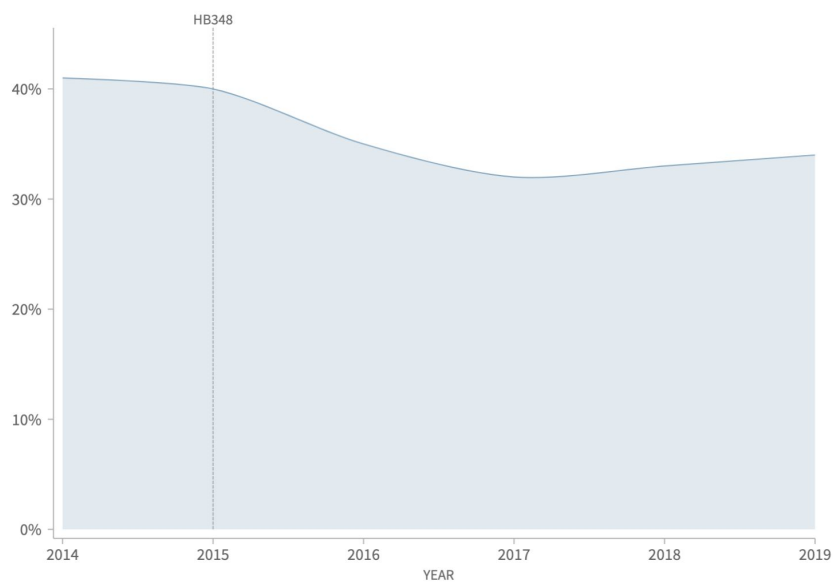
Focus prison beds on serious and violent offenders, expand alternatives to incarceration, while averting future criminal justice associated costs

Policies surrounding the use of prison focused on reserving prison beds for serious and violent offenders by implementing the earned time credits program; placing ceilings on probation and parole violator prison length of stay; reducing penalties for certain low-level drug offenses; and restricting the use of drug free zone enhancements. Together, these policies meant to ensure that the system is focusing its resources on those that pose a significant public safety concern.

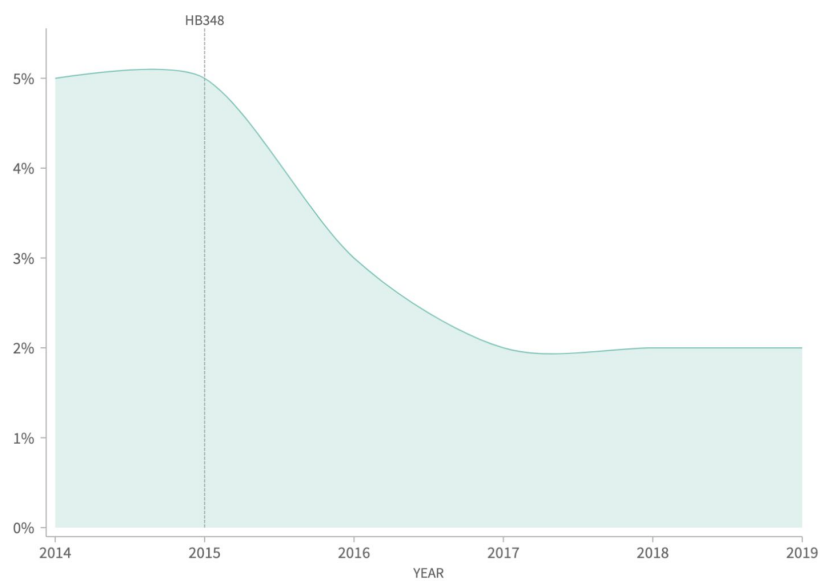
Non-violent Offenders

Figure 1 shows the percent of the prison population whose most serious offense is considered a violent offense. The figure shows a slight increase to 34 percent in share of non violent offenders for fiscal year 2019 from the initial decline of 41 to 33 percent between fiscal years 2014 and 2018. As seen in Figure 2, similarly to the previous reported year, drug possession only offense remains at 2 percent for fiscal year 2019. This reduction is likely, a result of penalty reductions for those convicted of a drug possession only crime from a Felony 3 to a Misdemeanor A offense, which significantly shifted the severity of drug possession only court case filings.

**Figure 1: Share of prison population that are
Non-violent: Fy2014-19**



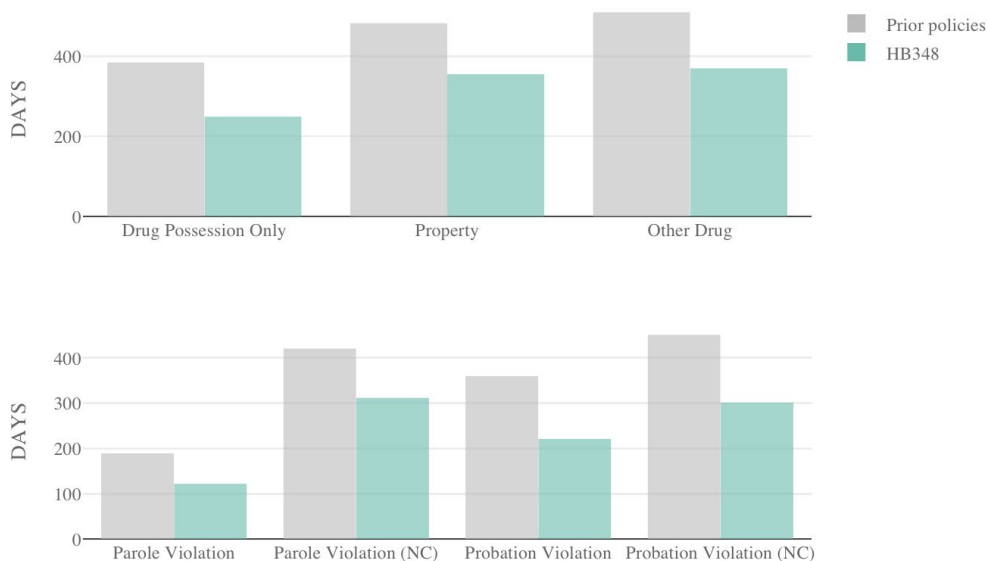
**Figure 2: Share of prison population whose most severe
offense is a drug possession only crime: Fy2014-19**



Prison Length of Stay

Figure 3 depicts the average length of stay before and after implementation of House Bill 348 for selected non-violent offenses and parole and probation violations. Because research shows that longer length of stays does not correlate with better outcomes, policies in House Bill 348 reduced the length of time that probationers and parolees stay incarcerated upon a revocation. Furthermore, because prison length of stay is directly linked to the size of the prison population, reducing the average length of stay can have a large impact on the prison population growth. As seen in the figure, this policy change has decreased the average prison length of stay for these targeted offenses and violations.

Figure 3: Prison length of stay for selected offenses



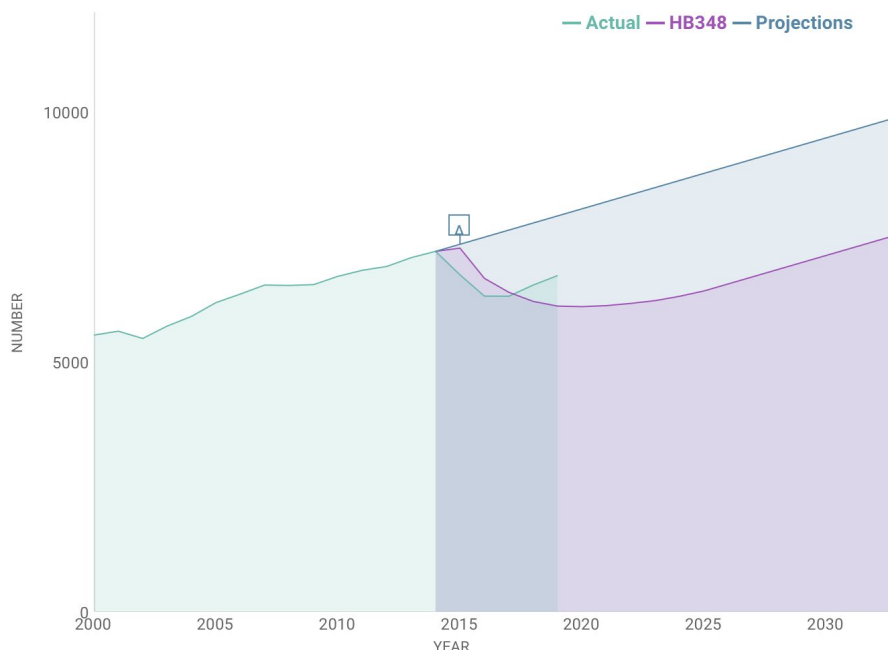
Prison Drivers

The prison population is a function of prison admissions and releases. When admissions exceed releases the population increases. The reverse also holds true. Hallmarked in previous year's report, Utah's prison population exceeded its post-reform projections in fiscal year 2018. This trend continued for this current fiscal year of 2019.

Figure 4 displays the prison population from 2000 to a projection into year 2033. Though the prison population is currently higher than projected by House Bill 348, at around 6,700 prisoners, it remains significantly under the projections absent reform. In this section we

examine potential prison drivers that may help explain the difference between current performance and House Bill 348 expectations.

Figure 4: Prison population through time: Actual, vs Projected: 2000-2033



Delayed Parole Decisions

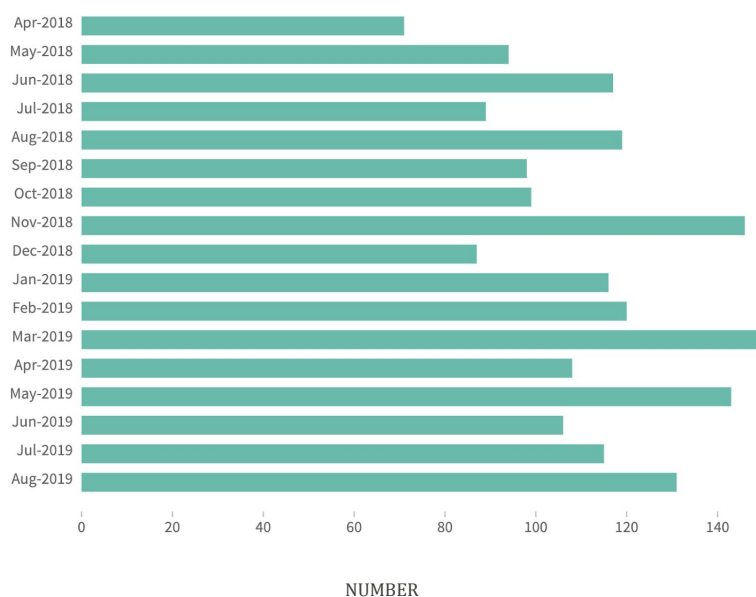
One factor that can delay a prisoner from being released to parole into the community is lack of bedspace in a community correctional center. This delay will put upward pressure on the prison population if admissions to prison starts to exceed the number of releases.

Figure 5 shows the number of postponed parole decisions between April 2018 and August 2019.¹ The Figure shows that while these decisions tend to fluctuate, over this time- span, they averaged at 113 prisoners per month. This implies that each month, an average of more than 100 prisoners cannot be released to parole and instead, remains in prison for at least an additional few days or weeks until bed-space becomes available in the community.

¹ Data is not available prior to April 2018, thereby precluding a comparative analysis of pre- and post reform.

This challenge highlights the need for an increased emphasis on resources in reentry services and community-based housing.²

**Figure 5: Number of delayed parole releases:
April 2018-August 2019**



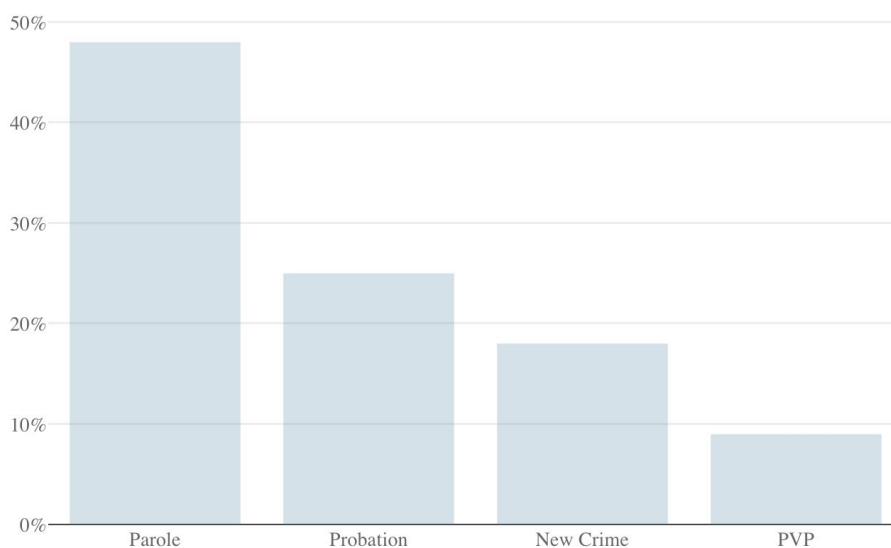
Prison Admissions by Type

An important factor behind the current prison population growth is the rate that parolees are returned to prison from parole. Last year's [annual report](#) shared findings from an evaluation conducted by the Commission on Criminal and Juvenile Justice (CCJJ) on outcomes for individuals on parole pre- and post- reform. Driven by high risk individuals who had a failed parole prior, individuals were more likely to return to prison on a technical violation post-reform. The study elucidated the need to examine the causes behind revocations, and the implementation of supervision practices in regards to the intent of policy reform. Findings from this study further highlights the importance of distinguishing a return to prison based on a technical violation versus a new crime to better understand parole revocations as it relates to policy versus public safety concerns.

² Policies in House Bill 348 that placed ceilings on the length of time a parolee or probationer could be incarcerated upon a revocation from parole/probation may be a factor behind these delayed releases. Particularly, these "ceilings" may have unintentionally made it challenging for the system to accommodate timely release decisions.

Figure 6 shows prison admissions by type, for fiscal year 2019. Those serving time on parole make-up the largest share of admissions at close to 50 percent. This is followed by probationers at 25 percent, new crimes in the community (NC) at 18 percent, and parolees diverted to Utah Department of Corrections' parole violator program (PVP) at 9 percent.³ As discussed under Policy Objective 2, the composition of prison admissions, with almost three-quarters comprised of individuals on probation and parole has called for a closer examination of current supervision practices, AP&P case-load, and House Bill 348 policies to better understand how to improve outcomes for individuals on probation and parole.

Figure 6: Admissions to prison by type: Fy2019



Statutory Crime Enhancements

An additional factor that *may* be linked to the increase in the prison population are the statutory crime enhancements that have occurred since 2015. Indeed, these statutory changes can have a tremendous impact on the jail and prison populations if such a change involves a moderate to large number of individuals. While an impact study of recent statutory changes is beyond the scope of this report, these legislative changes should be taken into account as we evaluate performance in our criminal justice system over time.

³ The Parole Violator Program was implemented in July of 2017 and focuses on diverting high-risk parolees prone to having substance use problems to a program held in the prison where they can get additional treatment opportunities and support.

Policy Objective 2, Improve Outcomes

Strengthen community supervision practices to hold offenders accountable, while improving outcomes for offenders on probation and parole

This next section segues the dialogue on individuals on AP&P probation and parole. The policy changes associated with reform included the development and implementation of the Response & Incentive Matrix (RIM) to enhance supervision performance; earned compliance credits while on supervision; and increased transitional support for parolees as they exit the prison system to serve the remaining part of their sentence in the community.

Community Corrections

Figure 7 depicts trends in the number of individuals on AP&P probation and parole. Other forms of probation include Court probation for those convicted of less severe crimes. In general, an upward trend is seen in both the probation and parole populations from fiscal year 2013 to fiscal year 2019. In particular, there has been an increase in those sentenced to probation on a Class A misdemeanor offense. In contrast, the number of individuals on felony probation has declined. This is in part, related to the penalty changes in drug possession only crimes, which as previously mentioned, reduced these offenses from a felony 3 to a Class A misdemeanor for the first two convictions, and a direct result of AP&P focusing their resources on supervising offenders that are high risk to reoffend.

Figure 7: AP&P supervision populations: Fy2014-19

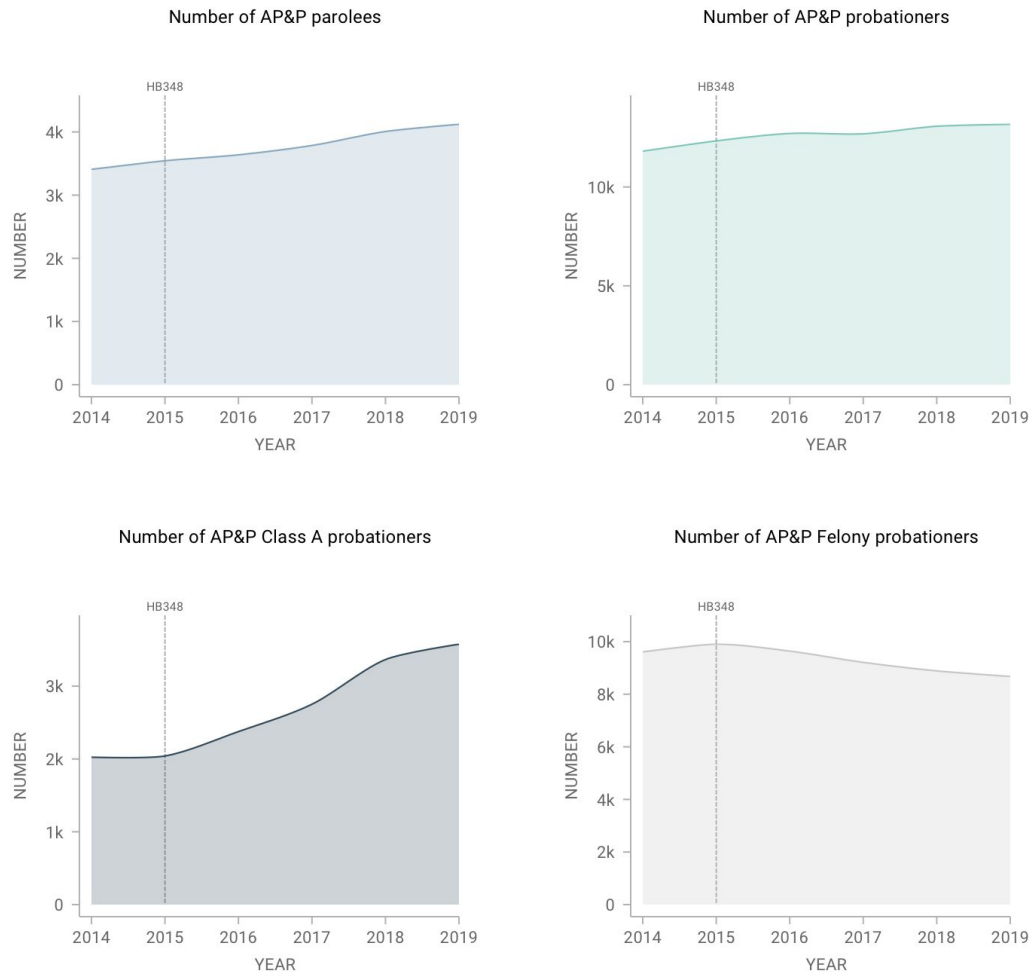
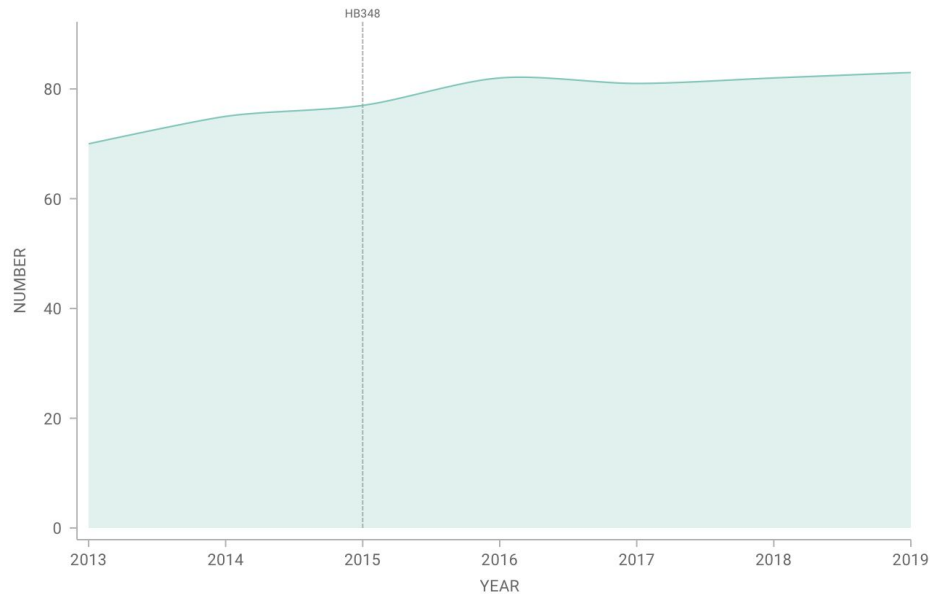


Figure 8 shows the corollary trend of AP&P caseload with the increase in parole and probation population. The challenge in an increase of caseload may be a lessened capacity for AP&P agents to provide meaningful supervision to individuals on probation and parole. Recognizing the importance of quality supervision, Utah state leaders passed legislation in the 2019 General Session to allow non-sworn officers to write the presentence investigation report.⁴ Decreasing the administrative workload on sworn officers for writing reports will increase their time spent on supervisory responsibilities, including,

⁴ In the state of Utah, a recommendation of either probation, jail, or prison is based on an offender's criminal history score, and the severity and type of their most recent offense. Additionally, the offenders mitigating/aggravating factors are taken into consideration. This along with information about criminal records, drug and alcohol use, personal and family history, education, employment, and any victim or restitution information is included in the PSI report and ultimately sent to the judge for review.

implementation of the Response & Incentive Matrix (RIM), and other evidence-based practices.

Figure 8: AP&P case load (risk-adjusted): Fy2013-19



National Landscape

High rates of supervision failures is an issue nation-wide. Indeed, increasing success rates for individuals serving time on supervision remains a central focus not only for Utah but for our nation's criminal justice professionals. A 2019 [report](#) by the Council of State Governments, showed that half of all prison admissions are caused by failures on supervision for 20 US states. The report posed several key questions for states to consider, including an emphasis on implementation of supervision practices that are designed to reduce new criminal behavior; responses to technical violations; and annual costs associated with supervision. These points in particular resonates with the importance of fidelity of implementation to improve outcomes for offenders on probation and parole while promoting accountability, maintaining public safety, and assessing financial costs. Given this national context and the current local landscape, the Pew Charitable Trust is working collaboratively with Utah's criminal justice stakeholders on two Utah specific data-driven efforts around community supervision and community treatment. The outcomes from these efforts will be made available in year 2020.

Policy Objectives 3-5, Expand treatment

Improve and expand re-entry and treatment services while reducing burden placed on local correction systems

This next section provides an update on policies aimed to improve and expand re-entry and treatment services; match resources to offenders' needs; and support local corrections systems. Policies in support of these objectives, included, expanded monies for in-community substance use and mental health treatment, implementation of a state-wide risk and needs screening process in Utah's county jails, and a reclassification of certain low-level traffic violations to reduce their burden on county jails.

Expand Community Treatment

At the core of criminal justice reform efforts lie the emphasis on expanding treatment capacity for offenders in need. The importance of this policy objective is further substantiated by a recent evaluation conducted by the Kem C. Gardner Policy Institute and the Utah Hospital Association. The report noted that Utah has a high rate of adults with poor mental health (close to one in five adults)⁵ coupled with a shortage in mental health providers. In regards to criminal justice involved individuals, the legislature awarded additional treatment funding to the Department of Substance Abuse and Mental Health to be distributed to their local area authorities. While the annual funding started at \$4.5 million, an additional on-going \$6 million was awarded in fiscal year 2018. These monies were awarded with the intent to increase both capacity and quality of substance use and mental health treatment in the community. Consistent with prior annual reports, here we provide an update on how this funding has impacted the number of justice involved clients being admitted to substance use treatment.

Figure 9 shows the number of justice involved individuals admitted to substance use treatment between fiscal year 2014 and 2019, by type of treatment.⁶ As seen, admissions to residential and detox treatment has seen an increase in the past two years, with the total number of admissions continuing to increase between fiscal year 2018 and 2019. In contrast, admissions to outpatient treatment, which also includes intensive outpatient, slightly declined between fiscal year 2018 and 2019. Table 1 further shows these numbers as well as the yearly percentage change in the total number of admissions. While the total

⁵ Poor mental health is measured as seven or more days of not good mental health in the last 30 days. Utah Behavioral Risk Factor Surveillance System, Office of Public Health Assessment, Utah Department of Health.

⁶ An analysis around the number of clients served for substance use treatment showed a similar trend as the numbers around admissions to substance use treatment.

number admitted increased between the selected time period, some variation exists amongst the different local area authorities.

**Figure 9: Admissions to substance use treatment by type:
Fy2014-19**



Table 1: Admissions to substance use treatment by type: Fy2014-19

| Fiscal Year | Residential | Outpatient | Detox | Total | Yearly % Change |
|-------------|-------------|------------|-------|--------|-----------------|
| Fy14 | 1,489 | 11,082 | 4,300 | 16,871 | |
| Fy15 | 1,480 | 10,318 | 3,125 | 14,923 | -12 |
| Fy16 | 1,532 | 10,416 | 3,163 | 15,111 | 1 |
| Fy17 | 1,778 | 10,138 | 3,212 | 15,128 | 0 |
| Fy18 | 2,539 | 11,809 | 4,224 | 18,572 | 23 |
| Fy19 | 2,918 | 11,325 | 5,695 | 19,938 | 7 |

Understanding the difficulty in lack of resources for treatment services and shortage in workforce services, as the Utah mental health report indicated, it is pertinent for stakeholders to continue to work together to find viable solutions; in particular, endeavors that may fall outside of the criminal justice community. For example, in relation to the issue of mental health and substance use workforce shortage, the Utah Substance Abuse Advisory Council, Public University leaders, and community partners, are having several discussions on incentivising future and current social work students to practice with this population in need. Some other efforts include state leaders creating legislation to increase resident positions for mental health and substance use fields such as psychiatry.

Match Resources to Offenders' Needs

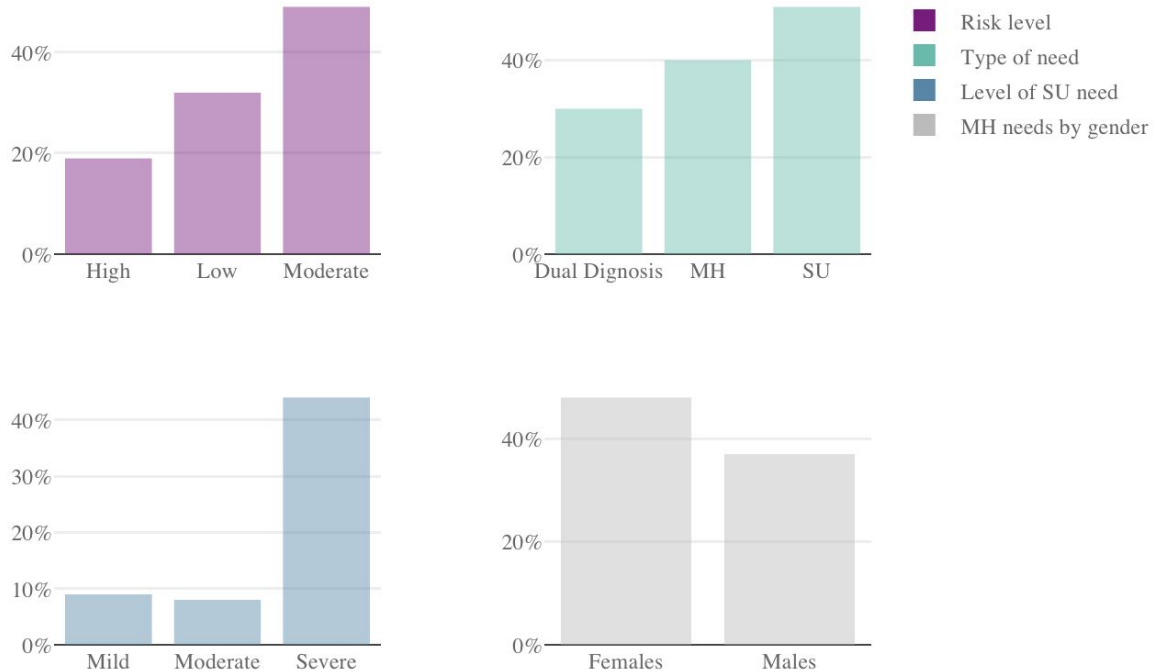
Criminal justice reform supported the creation of a state wide risk and needs screening process to better understand the prevalence of mental health and substance abuse needs. The screening produces an indicator score for those in need of a substance use and/or mental health treatment referral, and categorizes offenders into low, moderate, or high risk to reoffend. Screening offenders for their risk and needs is considered an evidence-based practice and further aids in:

- making appropriate referrals for full assessments
- guiding jail housing decisions
- assigning supervision levels; &
- understanding Utah's treatment gap

The majority of screenings have been performed in Salt Lake County (>50%), with a lesser percent in Utah's rural areas. While the need for treatment services is strong across our state, Urban areas show a larger percent of substance use and mental health treatment needs than rural areas. With approximately 90,000 screenings being completed since its implementation, the information from these screening indicate the following (seen in Figure 10);

- half of Utah's arrestees are in need of a substance use referral
 - close to 50 percent of those in need of a substance use referral screened in the *severe* category
- 40 percent is in need of a mental health referral
 - this need is particularly elevated for females
- close to one third screen positive for a possible co-occurring disorder; &
- 70 percent of offenders were screened as being moderate to high risk to reoffend

Figure 10: Risk and Needs breakdowns



In general, the completed risk and needs screenings underscore the continuing demand for both mental health and substance use treatment for offenders in need. Tailoring supervision and treatment plans according to an individual's risk and needs has shown to be correlated with better outcomes.

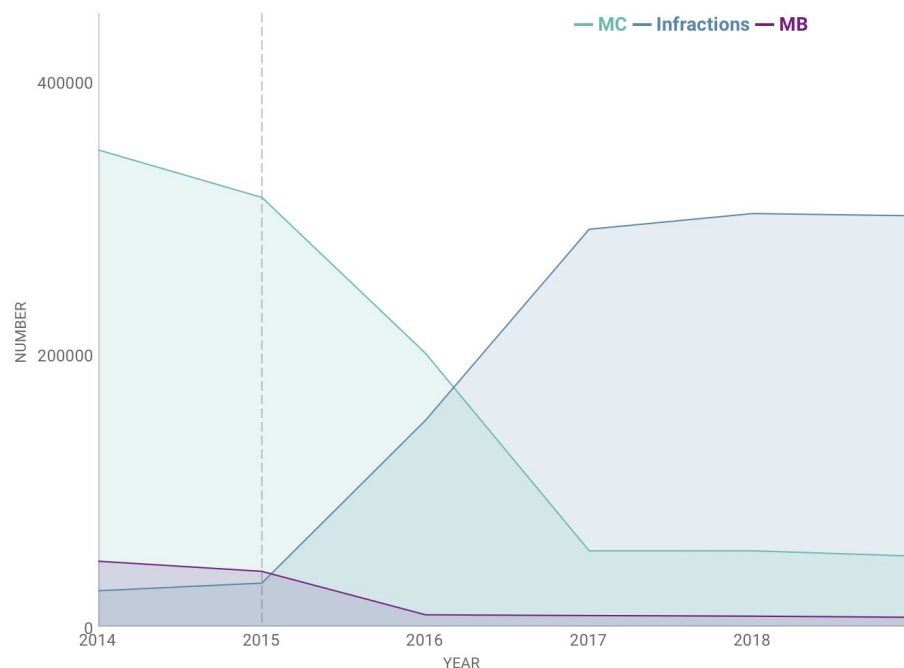
Furthermore, and as discussed in [prior reports](#), these needs are particularly high amongst the female population, whose background often include a history of trauma and abuse. Since an underlying mental health disorder exaggerates the risk to reoffend if paired with a criminogenic risk factor, such a finding highlights the need for the system to enhance the availability of services to meet female specific needs. Unfortunately, the screening process ended in fiscal year 2018 due to a cut in funding.

Support Local Corrections Systems

Serving time in jail can result in collateral consequences for an individual and their families as well as cost valuable resources for taxpayers. To reduce the burden placed on county jails, policies in House Bill 348 re-classified certain low-level traffic offenses from a Misdemeanor C to an Infraction to better reflect their severity. Figure 11 shows the number

of traffic related court filings in Utah between fiscal year 2014 to fiscal year 2019 by severity. As depicted, there was a significant shift for fiscal year 2016, where the number of Misdemeanor C court filings drastically decreased and consequently, the number of Infractions increased. Re-classifying these violations is expected to reduce the number of individuals booked into jail while reducing the criminal justice system's response to these violations.

Figure 11: Shifts in selected traffic filings: Fy2014-19

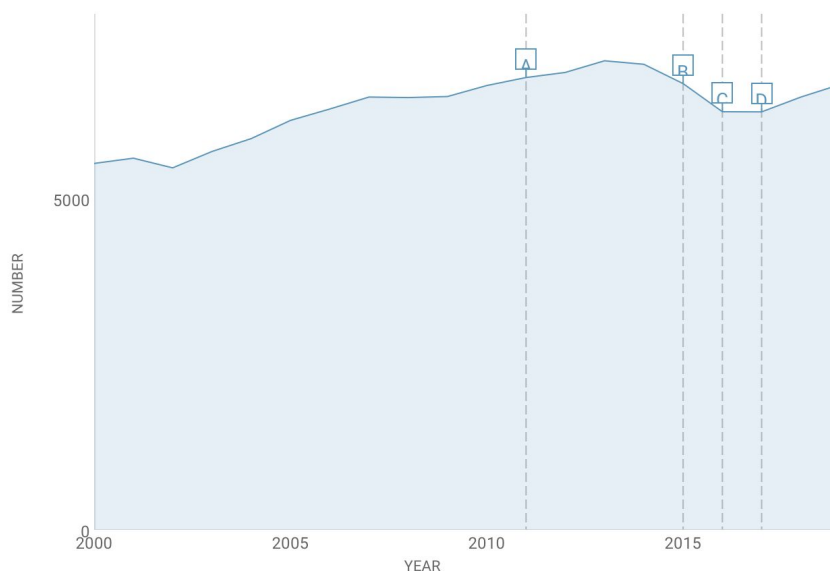


In a recent and significant move towards increased data transparency, Salt Lake County produced a publically available [dashboard](#), showing its jail population through time with demographic and booking information. In placing the jail population in context to important policy changes, Figure 12 shows Salt Lake County's jail population between January 2000 and September 2019, while marking noteworthy policy initiatives. Changes in policy and practice include [Early Case Resolution](#)⁷ (A) in 2011; House Bill 348 (B)

⁷ Early Case Resolution was a court pilot program implemented in the Salt Lake County Third District Court which aimed to: (1) increase the speed of processing for all cases filed; (2) provide the 'same justice sooner'; (3) provide criminal defendants with appropriate sentences and treatment services; and (4) reduce recidivism.

implemented in October of 2015; Salt Lake County jail booking restrictions (C) in 2016; and the Operation Rio Grande initiative (D) in July of 2017.⁸

**Figure 12: Salt Lake County average daily jail population
(by year): 2000-09/2019**



As seen, these policies *may* have had varying impacts on the Salt Lake County jail population. Most prominently, a general decrease in population during the time periods 2011 through 2016 followed by an uptick through current fiscal year 2019. The reclassification policy along with other reform efforts was implemented in October of 2015 and its intent was to reduce the burden on all county jails in Utah, however there may be other practices and procedures outside of criminal justice reform that could have an impact on jail populations.

Moreover, being able to assess a causal effect of criminal justice reform on the jail population is complicated with its varying nuances, and necessitates increased information sharing. In order to better support local correction systems, a more fruitful approach may include a thoughtful analysis around each county jail's population to identify gaps, which can then guide targeted support efforts. In this last section, we discuss the policy objective, *ensuring system-wide oversight and accountability* while providing a discussion around current action-oriented initiatives led by CCJJ and its partner agencies.

⁸ A special thank you to Salt Lake County Information Services for sharing their data for use in this report.

Policy Objective 6, Ensure Oversight

Ensure oversight and accountability, while providing ongoing support for implementation processes

The Commission on Criminal and Juvenile Justice (CCJJ) comprised of members representing all branches of the State's criminal justice system were at the forefront of criminal justice reform efforts.⁹ Since the inception of House Bill 348, CCJJ has provided training and oversight through various training sessions with AP&P and prosecutors, presentations with judges, and worked with defense attorneys. With implementation of House Bill 348 being in its fourth year, there is an increased need for commitment and collaboration to continue ensuring that the intent of current justice policies align with practice; adhere to evidence-based best practices; and maintain fidelity in implementation. Understanding that many individuals who were originally present at the beginning of reform may have transitioned, CCJJ has reconvened a workgroup to closely examine each policy objective, associated data trends, and system challenges to create data-driven, research-informed, and thoughtful action steps. In addition to the workgroup, there is an investment in partnering with national leaders in criminal justice reform to address critical issues such as community supervision.

Further, it is important to mention that due to a strong partnership and transparency efforts from various stakeholders, CCJJ has been able to gather data to assess trends relating to reform efforts to meet the goals as outlined above. However, in order to provide the best information possible to inform state leaders of successes and potential challenges, increased partnership and data sharing across state and local entities is crucial. Particularly as reform efforts centers on the criminal justice system as a whole, expanding the lens to include information not only on the prisons but of state-wide county jail populations is of utmost priority.

Conclusion

In order to solve important criminal justice challenges, such as reentry and reduction of recidivism, policy needs to be contextualized from an ecological perspective.¹⁰ This perspective focuses on an individual's interrelational transactions between systems, and emphasizes that all elements within an ecosystem play an equal role in the issue at hand.

⁹ See Appendix B for a list of agency names.

¹⁰ See Bronfenbrenner, U. (1979). *The Ecology of Human Development*. Cambridge, MA: Harvard University press for further reading.

For example, some challenges identified by the working group, as it relates to each policy objective, fell outside of what the criminal justice system may have influence over.

For instance, the issues of housing and employment as it relates to being able to improve outcomes for individuals on supervision, may need support from the general community and social services system. Another example is the fluctuating state of medicaid expansion in Utah to cover incarcerated individuals for mental health and substance use treatment. And with the challenge of workforce shortage to increase and upkeep the mental health and substance use needs, outreach to varying stakeholders from higher education, health, and behavioral health community to create viable solutions was established. Additional factors demonstrated to impede an individual's ability to successfully exit the criminal justice system include the area of court-ordered debts and barriers associated with a past criminal record. Furthering discussions around the automatic record expungement act, passed during the 2019 General Session is imperative for helping individuals exit the criminal justice system while becoming productive members of society.

As such, and as illustrated in the below Venn diagram, in order to sustain effective oversight, it is pertinent to have collaboration across state and local levels while considering the transactions between different systems that an offender may have contact with. Furthermore, training and education in fidelity of implementation is an area of continued importance as well as discussion in resource allocation to support the intent of criminal justice policies. **CCJJ remains committed in providing information, working with partner agencies, and supporting research-informed decision making to advance the success of criminal justice reform.**

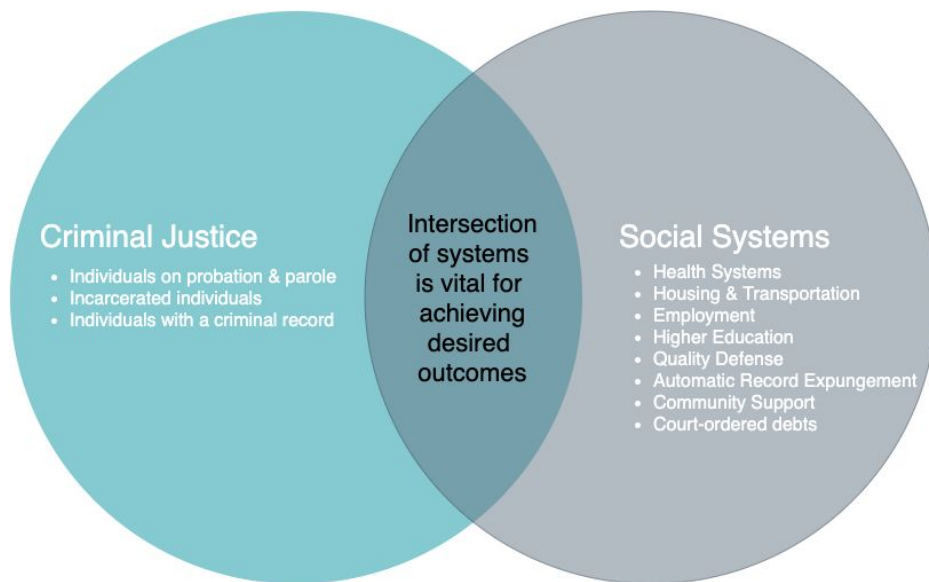


Figure 13: Venn diagram showing the intersection between criminal justice and various social systems

Appendices

Appendix A

Figure A1 and A2 shows general trends in drug possession only court case filings and arrests rates through time. As seen in both figures, drug filings and drug arrest rates were increasing prior to the reform and continued to increase afterwards. Between fiscal year 2018 and 2019, both drug possession court filings and drug arrests rates declined. While property and person arrest rates have declined in recent years, arrest rates related to person crimes remained constant between fiscal year 2018 and 2019. While these data points do not establish a causal effect of House Bill 348 policy effects, they can aid in contextualizing findings in relation to broader criminal justice system trends. It should further be mentioned that changes in enforcement practices is directly linked to the volume of both arrest and court case filings. Hence changes in these rates through time, may not be reflective of actual changes in “activity” around these measures.

Figure A1: Drug possession court case filings: Fy2014-19

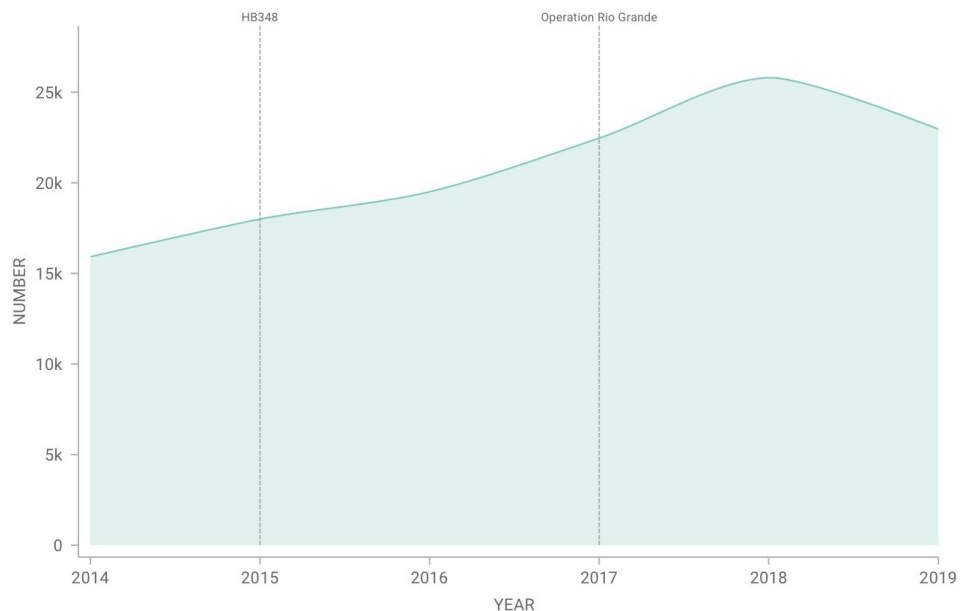
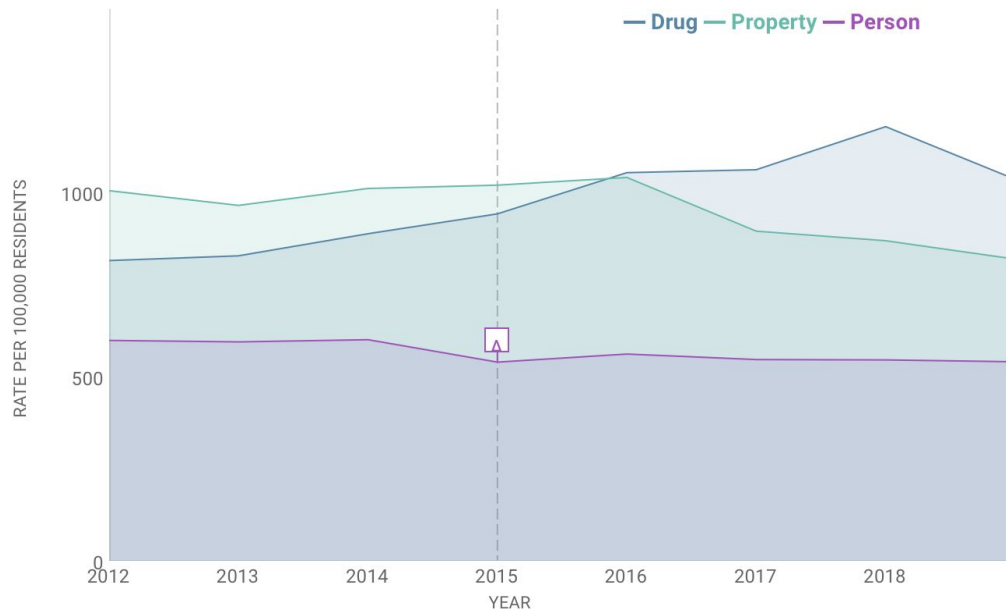


Figure A2: Arrests per 100,000 Utah residents: Fy2014-19



Appendix B

List of agency names

- State Senate
- House of Representatives
- Utah Substance Abuse Advisory Council
- Utah Office of the Attorney General
- Utah Sentencing Commission
- Administrative Office of the Court
- Board of Pardons and Parole
- Juvenile Justice Services
- Public Education
- Utah Department of Corrections
- Utah Board of Juvenile Justice
- Statewide Association of Prosecutors
- Utah Chiefs of Police
- Utah Juvenile Court
- Utah District Court
- U.S. Attorney General
- Utah State Bar
- A Community Citizen
- Department of Public Safety
- Utah Council on Victims of Crime
- Division of Substance Abuse and Mental Health
- Utah Sheriffs' Association

References

[Current Criminal Justice Policies in Utah, 2018 Annual Report](#) (2018). Utah commission on criminal and juvenile justice.

[HB348 Policy Shifts: Drug Free Zone Enhancements: Fy2014:19](#) (2019). Utah commission on criminal and juvenile justice.

[HB348 Policy Shifts: Trends in Traffic & Drug Filings: Fy2014:19](#) (2019). Utah commission on criminal and juvenile justice.

[Highlighting: Females in the Criminal Justice System](#) (2019). Utah commission on criminal and juvenile justice.

[Justice Reinvestment Report \(2014\)](#). Utah commission on criminal and juvenile justice.

The Council of State Government (2019). [Confined and Costly: How Supervision Violations Are Filling Prisons and Burdening Budgets](#).

Acknowledgements

We would like to extend our appreciation to all of our partners for their ongoing investment and collaboration in information sharing for the writing of these reports as well as for their participation around Utah's criminal justice reform efforts.